

DOMESTIC RELATIONS

Brad and Jennifer were married in 1970. Two children were born of the marriage, one in 1973 and in 1975. During the marriage, Jennifer worked full time as a police officer. Brad worked off and on but never had a steady income.

Brad had a severe alcohol problem. He left the house on several occasions because of his over consumption of alcoholic beverages and had lost several jobs because of his alcohol intake. In addition, he had several affairs during the marriage.

In 1995, Jennifer became ill and could no longer work. Jennifer applied for a disability pension from the City of Woonsocket, where she was employed without notifying Brad of her application.

Jennifer qualified for disability pension benefits, and was found to be fully disabled. If she had continued to work with the Woonsocket Police Department, Jennifer would have in five years received a full regular pension. In addition, she was awarded social security disability benefits. After qualifying for the aforesaid disability benefits, Jennifer filed for divorce from Brad.

There was substantial evidence presented at trial that during his wife's illness Brad continued to get drunk, treated Jennifer cruelly, and had additional affairs.

Further evidence at trial established that Brad had mistreated his children on numerous occasions when he was intoxicated, that Jennifer was always a good and faithful wife and was the main financial supporter of the family. Although the Family Court at the

contested divorce hearing did not find any physical abuse by Brad, it did find substantial emotional abuse towards Jennifer.

In his defense, Brad argued that he was an alcoholic, that alcoholism is a disease, not a crime, and that he should not be punished for having a disease.

Brad also took the position that he is entitled to half of any disability pension benefits which Jennifer gets from the Town of Woonsocket, plus half of her social security disability benefits.

Jennifer takes the position that Brad is not entitled to any of her disability pension from the City of Woonsocket, nor is he entitled to any of her social security disability benefits.

You are the Family Court Judge in this contested divorce. How would you rule with regard to the following issues? Give reasons for your answers.

1. Is Brad entitled to equitable distribution of Jennifer's disability pension?
2. Is Brad entitled to equitable distribution of Jennifer's social security disability benefits?
3. What should be the equitable distribution percentage for each of the divorcing parties? Is Brad's defense that he is an alcoholic and should not be punished for having a disease valid pursuant to Rhode Island equitable distribution law?

All of your answers to the above questions should be based solely upon Rhode Island statutory and case law dealing with family law.

TRUST, PROBATE, WILLS, and ESTATES

Celinda Cuckoo was born in 1952, the third child of wealthy parents, in Providence, Rhode Island. Caught up in social causes and the drug culture of the late 60's and early 70's, Celinda hit the road in 1970. Over the years, she kept in touch with one of her brothers, Matt, who knew that Celinda had given up a baby for adoption in 1972 in San Jose, California.

Celinda reappeared in Providence, Rhode Island in 2002 suffering from a chronic liver disorder; she was taken in by her parents. She died in June of 2005. At her death, Providence Plantations Bank (PPB) was the trustee of a trust established for Celinda in 1953 under the will of her grandfather. This trust provided that before Celinda was 21, all distributions were solely at the discretion of the trustee. After age 21, the income was to be distributed to Celinda. She never accepted this "bourgeois tainted money," so the bank placed it in a bank account in her name. At her death, the trust is to be distributed *per stirpes* to her issue, or if none, *per stirpes* to her parents' other children.

The bank account was \$1,775,000 at Celinda's death. Her care during the last months of her life cost \$175,000. She did not have a will.

Matt has asked you what to do. Please advise him of the issues and forums involved including any tax issues.

PROBATE, WILLS AND ESTATES

Another attorney, Paula Probate, comes to you seeking advice. She tells you:

1. Two years ago, Paula spoke at a local Providence, Rhode Island investment club about the advisability of having a will. The next day, Felicia Fidos called for an appointment, saying that a friend of hers had been at the meeting and had suggested Paula as a person who might help her with an estate plan.
2. At the appointment, Felicia represented herself as a person without immediate relatives (an only child), 70 years old, fairly wealthy, and interested in a new charity which proposed to solve the city's abandoned dog problem by working to ensure that every elderly person, every child under the care of the state, and every other person who wanted one would receive a dog, veterinary care for the dog, and training classes. Her neighbor, Wolfe Crooke, was proposing to form this new charity and make Felicia a member of the board of directors.
3. As directed by Felicia, Paula drew up a will and trust which at Felicia's death left everything to this new charity (which was formed as a Rhode Island non-profit corporation) and naming Wolfe as the executor and successor trustee. Paula also drew up a durable power of

attorney to Wolfe and Felicia's long-term kennel helper, Ima Scotti. Ima was also named as Felicia's agent under her durable health care power of attorney. The trust provided that if Felicia ever ceased to act as trustee during her lifetime, the successor trustee was authorized to use the funds for her benefit (including gifts to appropriate persons and charities). After all the documents were signed in Paula's office, Felicia transferred her various brokerage accounts to the name of the new trust, the Felicia Fidos Trust.

4. Yesterday, four things happened:
 - a. Paula read in the morning paper about a fire that leveled Felicia's home late last night. Felicia cannot be found. Although she had made several phone calls earlier in the evening from her home, there is no sign of a body in the ashes.
 - b. Paula also read in the morning paper about Wolfe's local businesses, a pet store and a pet treat bakery, declaring bankruptcy. There are signs in the windows of each business indicating that they are temporarily closed.
 - c. Wolfe called Paula wanting to pick up the original signed power of attorney. He mentioned that Felicia had unfortunately owed his businesses several

thousand dollars for dog food and that her substantial pledge to his charity was due.

- d. Ima brought to Paula's office Felicia's twin brother, Rex, who had birth certificates, various photographs, and other materials backing up his claim to be Felicia's brother. Ima verified his identity, saying that he had been a frequent guest at Felicia's home for the last 20 years. Rex wants to hire Paula to represent him in his attempt to keep control of Felicia's assets out of Wolfe's hands because he has a letter from Felicia in which she expressed her regret at having become involved in Wolfe's "schemes."
- 5. Paula and Rex want your advice about whether Paula can represent Rex, what Paula's response should be to Wolfe, and what actions should be taken (and in what courts) to assist Rex in his goal to block Wolfe's access to Felicia's assets.

PARTNERSHIPS

After satisfying his obligation to society with a court imposed stay at the Rhode Island Adult Correctional Institution, Mel is released into the community. Not having participated in any of the employment training opportunities offered by the ACI, and adjured by his probation officer to find an income-producing activity as soon as possible, it occurs to Mel during the heat of a July afternoon that he could make a lot of money marketing his grandmother's limeade recipe. He decides that an appropriate name for his business will be Mel's Limeade.

Although advised by several friends of the existence of a similar business in Rhode Island, Mel immediately goes about accumulating capital. It also occurs to him that the best place to start looking is amongst his more moneyed relatives who, having experienced the joys of his grandmother's limeade, will be sure to want to invest in his new business.

Alas, he finds that this is not necessarily the case. His brother Mick, currently out of work himself, agrees to be a partner with Mel, claiming that he used to watch grandma make the limeade. Therefore he and Mel together can make up batches of limeade for sale and general distribution. While Mick can contribute time and effort, he cannot contribute funds. Mel and Mick have a sister Mary who lives in Barrington, and another brother Mortimer who lives in East Greenwich. It is to these well-to-do siblings that Mel and Mick apply for capital for their new business. Neither Mary nor Mortimer are particularly optimistic about the ability of either Mel or Mick to start and run a successful business. However they both remember their grandmother's limeade fondly and, after discussion between themselves, agree that they probably should do something to help their less fortunate brothers out in their business endeavor.

Therefore Mortimer, who is an experienced business person, suggests to Mel that a limited partnership be formed for Mel's Limeade, with Mick and Mel being the general partners and Mary and Mortimer being limited partners,

contributing sufficient capital to get the business going. Neither Mick nor Mel are particularly informed about the legal aspects of a limited partnership and assume that all four parties can just shake hands and then Mary and Mortimer will start writing checks. "After all," Mel says to Mick, "the best partnership is a hand shake deal." He calls Mortimer and asks when the money will be coming. Mortimer says: "Not so fast - - have your lawyer set up the formalities." "What formalities?" inquires Mel.

1. What statutory "formalities" is Mortimer talking about, if any?

Mary calls Mortimer on the phone and says to him: "If you and I are going to be contributing all this money, even though we are so-called 'limited partners,' shouldn't the business have one or both of our names instead of just being called Mel's limeade?"

2. What is the legal answer to Mary's inquiry?

Mel wants to just name the business: "Mel's Limeade."

3. What problems, if any, do you see with this designation?

By now Mel's probation officer is looking for answers concerning Mel's employment status. Assume that Mel's Limeade business is set up pursuant to the formalities which you have previously described and with a name that conforms to Rhode Island's Limited Partnership law. Both Mary and Mortimer as limited partners make sufficient contributions to get general partners Mel and Mick started in business in Galilee, making and selling limeade.

After they have been in business for a few months Mary drops by to sample the product. She is aghast. "It's too sour!" she exclaims. "This is not the way grandma used to make it." She dashes back into the kitchen and in an hour makes up a batch of limeade which both Mel and Mick agree is far superior to what they have made. "You better let me make the limeade for a while," says Mary. "You two can watch as well as sell and hopefully you won't need me to do it for too long."

4. What legal consequences if any may there be to Mary if she proceeds to take over the responsibilities of making the limeade?

5. To what extent does your answer to the previous question change if Mary, instead of actually making the limeade, simply provides Mel and Mick with a better recipe?

Mel's Limeade owes its ability to procure a lease to a prime location in Galilee because Mortimer plays golf with the owner of the building. When Mortimer approached the owner of the building, Dave Bump, Dave was hesitant to rent to such an untried business. "Don't worry," Mortimer said, "I'm a partner." Mel's Limeade gets the lease.

6. If Mel's Limeade skips on lease payments (possibly due to poor sales of sour limeade) could Dave have any legal recourse against Mortimer?

All of your answers to the above questions should be based solely upon Rhode Island statutory and case law dealing with partnerships.

AGENCY

Please assume the following facts and
answer the questions at the end of the narrative

You are a Rhode Island lawyer. A new client, Ms. Gretta Grabbit, has come to see you. She relates the following information to you, and wants to know if she is entitled to any legal remedies.

One morning last month, Gretta was grocery shopping at the Fancy Schmancy Food Market in Providence. Gretta was examining a display of organic avocados, but she decided that they were too small and over-ripe to buy. She then noticed a partially opened container of larger and fresher appearing avocados placed on a cart parked in the aisle. Because no store clerk was in area to help her, Gretta decided to help herself to the contents of the container. Gretta selected the best avocados in the group. Because she had not bothered to use a shopping cart, she placed the avocados into the large handbag that she was carrying.

Suddenly, Gretta heard a male voice say, "I saw what you just did". Gretta looked up and saw a man wearing a white apron and hold a broom glaring at her. She responded, "What are you talking about?", to which he replied in a rather loud voice, "I saw you put the avocados into your purse." This confrontation drew the attention of several customers in the area.

Gretta became angry, and shouted to the clerk, "I could sue you and your boss for calling me a thief in front of all these people" In response, the clerk shouted, "Well then I'll just have to call store security to end this right now." Gretta was mortified. She stepped forward and lightly shoved the man as she shouted, "Do that and you'll regret it!" He pushed back with much more force and causing Gretta to fall to the floor.

Gretta pulled herself up to her feet and headed into the manager's office. The clerk followed her into the office. Gretta screamed at a woman sitting behind a desk that she had been attacked by "this horrible man." The woman then asked the clerk what had happened. He told the woman that he had caught Gretta stealing, but he did not deny attacking her. The woman then looked at Gretta and said, "What else do you expect when you're stealing from us?"

Gretta filled out an incident report and stormed out of the store. Since that afternoon, she has been experiencing back pain and anxiety. She is now afraid to go grocery shopping, fearing that she will be falsely arrested for shoplifting.

**Can the Fancy Schmancy Food Market be held
liable to Gretta Grabbit for the store clerk's
conduct?**

**Is any additional information required to answer this
question?**

Please state your reasons for your answer.

CIVIL PROCEDURE/EQUITY

Please assume the following facts and

answer the question at the end of the narrative

You are a Rhode Island lawyer. On May 27, 2005, a new client named Dan Delay comes to see you. He tells you that on May 1, 2005 he was handed some papers by a man he did not recognize. He shows you the papers. They are copies of a summons and a complaint, filed in the Providence County Superior Court, in which Dan is named as the defendant in an action brought by Ned Neighbor. The complaint alleges that Dan intentionally and wilfully destroyed Ned's property.

Dan tells you that he would have come to see you earlier, but that he suffered a stroke after being served with the complaint, and that he was just released from the hospital two days ago. You ask Dan what this case is about, and he relates the following to you.

About six months ago, Ned moved into the house next door to Dan. Soon thereafter, Ned cut down a line of shrubs that Dan had planted along the boundary between the two properties. Ned then built a large pen for his two large, loud-barking dogs. In Dan's opinion, the dog pen encroached upon his property. Dan complained to Ned about the removal of the shrubs and the dog pen. Ned, however, insisted that the land was his and that he had a right to do as he wished on his own property.

Tension between the neighbors increased. Ned then began allowing his dogs to run freely at night, after which Dan noticed that his well-manicured lawn was being dug up. One night when Dan was returning home late, the dogs growled at him and chased him. Almost every morning, Ned also noticed trash appearing on his lawn in the area of the property line.

Dan tells you confidentially that he lost his patience with Ned and decided to take action. One night, about six weeks ago when Ned was not at home, Dan let Ned's dogs out of the pen, doused the pen with gasoline, and set it on fire. Nevertheless, Ned continued to let his dogs continue to roam over Dan's property and dig up his lawn. The trash situation is worse than ever. It has cost Dan a lot of money to have his lawn restored several times, only to find it dug up again and again.

Dan wants the harassment to stop and he wants Ned to pay for the landscaping expenses caused by his dogs. At the end of your meeting with Dan you agree to represent him. Later that same day, you stop at the Providence County Superior Court clerk's office to examine the court file on the matter of *Neighbor v. Delay*. You discover that default was entered against Dan on May 24, 2005.

What must you do to protect and advance Dan's interests?

Please be as specific as you can as to what steps you must take.

Realco, a real estate development company, recently purchased property in West Warwick to build a first-class casino and hotel. After receiving the necessary approvals from state and local government officials, Realco approached the Fast-Built Construction Company ("Fast-Built") to serve as general contractor on the project. Fast-Built's president and sole stockholder, John Hammer, represented to Realco that Fast-Built was ready, willing and able to do the job. Hammer represented to Realco that Fast-Built had successfully built numerous casinos and hotels throughout the United States and had the ability to achieve Realco's goal of a first-class luxury casino and hotel in West Warwick. On the basis of Hammer's representations, Realco hired Fast-Built to serve as the general contractor.

The parties entered into a standard construction contract that required Fast-Built to complete the casino and hotel by a certain date. The contract stated that Hammer would not be liable for any of Fast-Built's debts or obligations. Thereafter, the project began. In the early going, the project went smoothly. However, half way into the project, Fast-Built began to have cash-flow problems. Soon, the subcontractors walked off the job after complaining they were not being paid and the project came to a halt. When Realco approached Hammer, he informed the hotel that Fast-Built was out of money and could no longer continue on the project.

Realco hired a private investigator who learned that Fast-Built was in good standing with the Rhode Island Secretary of State's office, had filed the appropriate governmental forms necessary to

operate and was capitalized with \$1,000. The investigator learned that Hammer, as owner and sole stockholder of Fast-Built, never took a salary but instead would take any money that Fast-Built received as income and deposit it into his own personal accounts, leaving only sufficient funds in Fast-Built's bank accounts to pay expenses. When Fast-Built's expenses sometimes exceeded its income, Hammer would loan money to Fast-Built to meet its expenses. The last loan, of \$50,000 from Hammer to Fast-Built, was paid back to Hammer and thereby rendered Fast-Built unable to pay its debts as they came due. However, the investigator also learned that Fast-Built always followed all corporate formalities, and that any transfers of money or loans were appropriately recorded in Fast-Built's corporate records as authorized by its president, Hammer himself. All proper loan documents were prepared and duly signed as well.

Lastly, the private investigator learned that Hammer was the owner and sole shareholder of another construction company, the Upright Construction Company ("Upright"), which had millions of dollars in the bank. Upright operated separately from Fast-Built, except that Hammer owned and controlled both companies. According to the investigator, both Fast-Built and Upright shared the same offices, had the same president, Hammer himself, and routinely transfer funds between themselves.

1. Discuss and evaluate the bases on which Realco might recover damages from Hammer.

2. Discuss and evaluate the bases on which Realco might recover damages from Upright.

Zipco was in the business of manufacturing specialized chips (“Z chips”) that computer manufacturers used to make high-performance laptops for the United States Government. In its promotional material, Zipco represented that any laptops containing its Z chips would perform better than conventional laptops.

Chipco, a start-up Rhode Island manufacturer of laptops, read Zipco’s promotional material and approached Zipco about purchasing a year’s supply of Z chips. After Zipco and Chipco had discussions about Chipco’s specific manufacturing needs, Chipco issued a purchase order to Zipco for a year’s supply of Z chips. The purchase order stated in part as follows:

Please enter our order for the amount of Z chips set forth below. The parties agree that any dispute arising under or relating to this agreement shall be filed in the Rhode Island Superior Court and will be governed by the laws of the State of Rhode Island.

Zipco responded by shipping the requested amount of Z chips with a written confirmation of the order which stated in pertinent part:

Zipco warrants that Z chips will be replaced if defective in manufacture. The foregoing shall be the sole and exclusive remedy for any defects in Z chips. The parties agree that any dispute arising under or relating to this agreement shall be referred to binding arbitration pursuant to the rules of the American Arbitration Association.

Thereafter, Chipco began manufacturing laptops and sold them to the United States Department of Defense, among other agencies. However, it quickly became apparent that Chipco's laptops did not work with the high-performance as advertised. Every agency of the United States Government immediately experienced problems with Chipco's laptops and all of them had to be recalled. Chipco's scientists later determined that the Z chips, the key ingredient in the laptops, had failed to meet product specifications.

Chipco filed a lawsuit against Zipco in Rhode Island Superior Court. Chipco is seeking a refund of the money it spent to purchase the Z chips, among other damages. In response to the lawsuit, Zipco has moved to dismiss the lawsuit on the basis of the arbitration clause in the written confirmation it sent with the Z chips.

1. Will Chipco's claims have to be arbitrated?
2. Will Zipco be able to enforce the sole and exclusive remedy provision in the written confirmation Zipco sent to Chipco when it shipped the Z chips?

CONFLICT OF LAWS

During 2002, Maria Silvia rented a Pontiac Grand Am from the Newport Office of Decrepit Rent-A-Car, Inc. Under the rental agreement, only Maria was to drive the vehicle and its operation was to be limited to the States of Rhode Island, Massachusetts, and Connecticut. Shortly thereafter, Maria lent the car to her daughter, Sophia Silvia, with permission to drive it within the States of Rhode Island, Massachusetts, and Connecticut. Despite those restrictions, Sophia drove the car from Providence to New York City with three friends to go shopping. Sophia and her three friends are all residents of Rhode Island. While traveling on Fifth Avenue in New York City, Sophia and her friends were distracted by the display window at Tiffany's Jewelry and became involved in an accident.

The friends who were passengers in Sophia's car instituted a negligence action in Newport County Superior Court against her, her mother, and Decrepit Rent-A-Car, Inc. In response, Decrepit Rent-A-Car, Inc., has moved for summary judgment arguing that it was not liable for Sophia's negligent acts because she was not an authorized operator. In addition, no one was authorized to operate the vehicle within the State of New York.

The question presented on Decrepit Rent-A-Car's motion for summary judgment is, which State's law, New York or Rhode Island, will govern Decrepit's liability. Under Rhode Island law, a car rental company in the position of Decrepit is not liable for the damages sustained by a person operating without authority and operating

outside their territorial limitations. Under New York law, a car rental company may be liable under those circumstances.

Please discuss the likely outcome of the motion for summary judgment, including the application of relevant conflict of laws principles.

